

## CHAPTER 59. OPINIONS AND ADVICES OF COUNSEL

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59.1. Ethics Act regulations in Part I as to opinions and advices of counsel.

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59.2. Standing requirements.

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59.3. Prospective conduct to be reviewed.

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### § 59.1. Ethics Act regulations in Part I as to opinions and advices of counsel.

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(a) The Commission shall provide advices of counsel and opinions in accordance with the procedures in section 1107 of the Ethics Act (relating to powers and duties of commission) and Chapter 13 (relating to opinions and advices of counsel).

(b) A person who acts in good faith based upon a written advice or opinion of the Commission issued to such person shall not be held liable for a related violation of the act if the material facts are as stated in the request.

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(c) A respondent or defendant who reasonably relies upon relevant advices or opinions of the Commission shall have an affirmative defense<sup>1</sup> under Section 1309-A(g)(1) of the act.

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### § 59.2. Standing requirements.

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(a) The following shall have standing to request an advisory under the act:

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(i) A principal, lobbying firm, lobbyist, State official or employee, the Department, the Board, or the authorized representative of any of the aforesaid; or

Deleted: An advice or opinion may be requested by a lobbyist, principal, State official or employee, or by his authorized representative, as to his own conduct, or by a lobbyist, principal, State official or employee regarding the conduct of employees responsible to him.

(ii) Individuals, entities or their authorized representatives regarding their status or duties under

<sup>1</sup> On April 11, 2007, the Committee asked the Department's staff to research the issue whether the burden of proof is on the respondent or defendant to assert an affirmative defense. The Pennsylvania Rules of Civil Procedure at Rule 1030 require the defendant to assert all affirmative defenses in New Matter. See *Kituskie v. Corbman*, 714 A.2d 1027, 1032 n.8 (Pa. 1998); *Pennsylvania Pharmacists Association v. Department of Public Welfare*, 733 A.2d 666 (Pa. Cmwlth. 1999).

the act.

(b) An unauthorized request for an advice or opinion as to the conduct of another shall be considered a "third-party request" and will not be entertained.

(c) The Department and the Board shall have standing to request an advisory as to questions or issues regarding their respective duties and authority under the act.<sup>2</sup>

§ 59.3. Prospective conduct to be reviewed.

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An advice or opinion will only be issued as to prospective (future) conduct, of the subject of the request.

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<sup>2</sup> The Committee will clarify in the Preamble to this Chapter that the duties and authority of the Department and the Board do not extend to the conduct of a lobbyist, lobbying firm or principal. Questions regarding registrants must be requested by the registrant or an authorized representative of the registrant, as specified at section 59.2(a).